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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 MITCHELL KLEMASKE,

11 Plaintiff,

No. CIV S-04-1750 FCD KJM P

12 vs.

13 MICHAEL BRUNNELL, et al.,

14 Defendant.

ORDER

15 _____/
16 On August 24, 2004, plaintiff, a state prison inmate then proceeding in pro per,
17 filed a complaint alleging causes of action under the Civil Rights Act, 42 U.S.C. § 1983 and the
18 Americans With Disabilities Act, 42 U.S.C. § 12132. On February 9, 2005, the court found the
19 complaint appropriate for service on defendants Brunell and Woodford. On April 19, 2005,
20 defendants Brunell and Woodford filed a motion to dismiss.

21 On June 23, 2005, attorneys Claudia Center and Lewis Bossing of The Legal Aid
22 Society, Employment Law Center, entered an appearance on behalf of plaintiff and opposed the
23 motion to dismiss.

24 On November 9, 2005, plaintiff filed a first amended complaint alleging causes of
25 action under the Americans With Disabilities Act, 42 U.S.C. § 12132, the Rehabilitation Act, 29
26 U.S.C. §§ 791, et seq., and California Government Code § 11135. On November 23, 2005,

1 defendants filed a motion to dismiss the first amended complaint and set it for hearing before the
2 undersigned on December 28, 2005.

3 Local Rule 72-302 sets forth the duties to be performed by magistrate judges.
4 Among these are

5 Cases brought by a person in custody who is seeking habeas corpus
6 relief (28 U.S.C. § 2241 et seq., or any relief authorized by 42
7 U.S.C. § 1981 et seq.), including dispositive and non-dispositive
8 motions.

9 Local Rule 72-302 (c) (17).

10 Because the amended complaint does not include a cause of action “authorized by
11 42 U.S.C. § 1981 et seq.”, the hearing on the motion to dismiss and all further proceedings
12 should be held before the District Court.

13 Moreover, because plaintiff has filed an amended complaint, defendants’ first
14 motion to dismiss the original complaint is moot.

15 Accordingly, IT IS HEREBY ORDERED:

16 1. The hearing on defendants’ motion to dismiss filed November 23, 2005,
17 currently set before the undersigned on December 28, 2005, is vacated and defendants are
18 directed to renotice their motion before the District Judge;

19 2. Defendants’ April 19, 2005 motion to dismiss is denied as moot; and

20 3. The Clerk of the Court is directed to change the “nature of suit” code in the
21 court’s records to reflect the causes of action pled in the first amended complaint.

22 DATED: December 23, 2005.

23 
24 UNITED STATES MAGISTRATE JUDGE